In The

SUPREME COURT OF THE UNITED STATES

October Term, 1970

No. 414

LAUREL N. DUNN,

Petitioner

v.

NEWSPAPERS, INC.

Respondent

ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CIVIL APPEALS FOR THE TENTH SUPREME JUDICIAL DISTRICT OF TEXAS

BRIEF OF RESPONDENT IN OPPOSITION TO WRIT OF CERTIORARI

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BRIEF OF RESPONDENT

Respondent, Newspapers, Inc., respectfully moves the Court that the petition for Writ of Certiorari be denied and in support thereof shows the Court the following:

I.

OPINIONS BELOW

Petitioner's Appendix contains a copy of the opinion below.

II.

JURISDICTION

It is submitted that this Court has no jurisdiction with reference to this petition because:

(a) There are no special or important reasons set forth in said petition, as required by Rule 19, Supreme Court Rules.

(b) The State Court decisions appealed from did not decide a federal question of substance not theretofore decided by this Court, as required by Rule 19, Supreme Court rules.

(c) The question in the State Courts was one of libel under the State Statutes and was tried and decided on that basis, and no federal question was involved.

(d) Even if a federal question was or could have been involved, the determination of said possible federal question was not made and was not necessary to the determination of the case.

(e) It is not alleged by Petitioner that the Courts below decided a federal question not theretofore determined by this Court.

(f) It is not alleged by Petitioner that any federal question was decided below in a manner not in accord with applicable decisions of this Court.

(g) Petitioner's application for writ was improperly filed in that it is addressed with reference to the Court of Civil Appeals for the Tenth Supreme Judicial District, which is not the Court of last resort in the State of Texas and which was not the last and highest court in the State of Texas which reviewed the case.

(h) No State Statute or rule of procedure involved below, upon which this case was decided, is alleged to be repugnant to any treaty, statute, law or the Constitution of the United States.

III.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

It is respectfully submitted that there are no constitutional provisions or federal statutes, treaties of other federal laws of any type involved in this case.

IV.

QUESTIONS PRESENTED FOR REVIEW

It is respectfully submitted that there are no questions within the purview of Rule 19, Supreme Court Rules, or Title 28, Section 1257, U.S.C.A., that are properly submitted for review.

V.

STATEMENT OF CASE

This was a suit for libel, Petitioner complaining about the publication which is shown in the Transcript, attached to Provence's affidavit (Tr. 20). Respondent, in accordance with applicable state procedure, moved for a summary judgment, which was granted by the Trial Court. This was affirmed, as shown by the opinion of the Court of Civil Appeals for the Tenth Supreme Judicial District of Texas, a copy of which is contained in Petitioner's Appendix. The Court held, among other things, that "We think the complained of matter not libelous as a matter of law." The Supreme Court of Texas found no reversible error.

VI.

ARGUMENT.

It is respectfully submitted that this cause should not be reviewed by the Supreme Court because of the jurisdictional reasons set forth below. In addition, procedurally, it is submitted that the petition is in flagrant violation of Rule 23, paragraph 4, Supreme Court Rules, which reads: "The failure of a petitioner to present with accuracy, brevity and clearness whatever is essential to a ready and adequate understanding of the points requiring consideration will be a sufficient reason for denying his petition."

This was a libel suit and was tried as such, involving the State libel laws. Petitioner seems to take the position that this Court should consider this is an appeal concerning sufficiency of affidavits or other points of evidence, rather than being based upon any federal question of any kind that he properly raised and seems to take the position that any type of summary judgment proceeding is a violation of certain constitutional rights, which position is contrary to decisions of this court existing even prior to the federal rule concerning summary judgments. *Fidelity & Deposit Company of Maryland vs. United States of America, to the use of Lewis E. Smoot,* 187 U.S. 315, 23 S. Ct. 120; 47 L. Ed. 194 (1902). No federal law was properly preserved or was in any manner necessary to, nor involved, in the decisions complained of by Petitioner and Petitioner has set forth no reason, within the purview of the applicable Supreme Court rules or federal statutes as to why this Court should grant his Writ of Certiorari.

VII.

CONCLUSION

It is therefore respectfully submitted that this case is not a proper one for review by certiorari in the Supreme Court of the United States and that the petition for Writ of Certiorari should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

It is certified that a copy of the foregoing brief was deposited in the United States mail, with first class postage prepaid, to Laurel N. Dunn, Petitioner, 2811 Old Robinson Road, Waco, Texas 76706, at the same time it was forwarded to the Clerk of the United States Supreme Court.

Lyndon L. Olson

P M Johnston